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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1938

No. 541

JOHN CARRIER AND J. HARVEY CARPENTER, GUARDIAN OF JOHN CARRIER, INCOMPETENT VETERAN, PETITIONERS,

vs.

CURLEY BRYANT

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NORTH CAROLINA

PETITION FOR CERTIORARI FILED DECEMBER 23, 1938.

CERTIORARI GRANTED JANUARY 30, 1939.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

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[fol. 1] [Caption omitted]

IN SUPERIOR COURT OF RUTHERFORD COUNTY

CURLEY BRYANT

v.

JOHN CARRIER and J. HARVEY CARPENTER, Guardian of John Carrier

AFFIDAVIT AND MOTION FOR RESTRAINING ORDER

J. Harvey Carpenter, Guardian of John Carrier, defendant in the above entitled action, being first duly sworn, deposes and says:

1. That the above entitled action was tried at the June-July Term of Superior Court of Rutherford County, before His Honor, S. J. Ervin, Jr., and a jury, and upon the verdict of the jury judgment was rendered therein awarding to the plaintiff the sum of $1,500.00 as will appear by reference to said judgment.

2. This action was brought by the plaintiff against the defendant, John Carrier, for damages for alienation of the affections of the plaintiff's wife and for criminal conversation and your affiant hereby refers to the pleadings and other papers in said action and by reference to same are hereby made a part hereof.

3. That the defendant gave notice of appeal in open court from the judgment referred to above and was allowed forty [fol. 2] days in which to make and serve case on appeal; that the defendant has executed and filed appeal bond as provided by order of the Court and his counsel are engaged in the preparation of the case on appeal and intend to perfect the same as provided by law.

4. That the plaintiff has, through his counsel caused an execution to be issued by the Clerk of Superior Court of Rutherford County upon the above mentioned judgment and has placed same in the hands of the Sheriff of Rutherford County who is now threatening to levy upon all of the property of the defendant, John Carrier, to satisfy same.

5. That as affiant is advised and believes, and therefore, alleges all of the property owned by the defendant, John Carrier, is now in the hands and custody of this affiant as Guardian of the said John Carrier, and that all of said property represents the proceeds of war risk insurance and compensation paid to said John Carrier by the United States Government by virtue of a War Risk Insurance Policy issued to said John Carrier and by virtue of compensation paid to him on account of Service Connected disabilities suffered by him while in the active service of the United States as a soldier in the World War.

6. That as affiant is advised and believes, and therefore, alleges, all of the property belonging to said John Carrier, being the proceeds of said War Risk Insurance Policy and compensation or investments purchased with the proceeds of such War Risk Insurance and compensation, is exempt from levy under execution by virtue of the above mentioned judgment or from any other process issued upon said judgment under the provisions of Section 454-a of Title 38 U. S. Code Annotated, which is hereby specifically referred to and by such reference made a part hereof.

7. That the plaintiff, Curley Bryant, is utterly and totally insolvent and if allowed to levy upon the property of the [fol. 3] defendant, John Carrier, under said execution and collect the amount of said judgment under said execution the defendant will be irreparably damaged.

Wherefore, affiant prays the Court:

1. To issue a restraining order in this cause, restraining and enjoining the plaintiff, his agents, attorneys and servants, including the Sheriff of Rutherford County from proceeding further under the execution above referred to until further orders of the Court; and

2. For such other and further relief as to the Court may seem just and proper in the premises.

Edwards & Edwards, Attorneys for Defendants.

(Verified 8/17/38.)

IN SUPERIOR COURT OF RUTHERFORD COUNTY

ANSWER TO AFFIDAVIT AND MOTION

The plaintiff, Curley Bryant, answering the affidavit and motion of John Carrier, and J. H. Carpenter, Guardian of John Carrier, for his answer says:

1. That the allegations contained in paragraph 1 of defendants' affidavit and motion are not denied.

2. That the allegations contained in paragraph 2 of said affidavit and motion are not denied.

3. That the allegations contained in paragraph 3 of defendants' affidavit and motion are not denied.

4. That the allegations contained in paragraph 4 of defendants' affidavit and motion are admitted.

5. That this plaintiff has not sufficient information upon which to form an opinion or belief as to the truth or falsity of the allegations contained in paragraph 5 of said affidavit and motion, and for the purpose of this action denies the same.

6. That the allegations contained in paragraph 6 of defendants' affidavit and motion are untrue and are denied.

7. That the allegations contained in paragraph 7 of said [fol. 4] affidavit and motion are untrue and are denied.

And for a Further Answer and Defense to defendants' affidavit and motion, this plaintiff avers and alleges:

That J. Harvey Carpenter, guardian for John Carrier, in his report filed the 15th day of February, 1938, shows that the said John Carrier has in investments in U. S. Savings Bonds the sum of $8,350.00, and that he holds the notes of Jesse Sane, W. C. McRorie and T. C. Miller in the sum of $3,997.00, and that the only cash on hand in bank represents proceeds from his compensation and insurance, in the sum of $260.95; that under the statutes of the United States the said funds representing investments of John Carrier are subject to execution and, therefore, pending the appeal the plaintiff is entitled to a supersedeas bond for

the payment of said judgment, or in the event that the defendants fail to put up the same, to execution and sale of the property of the said John Carrier; a copy of said Annual report being hereto attached and marked "Exhibit A" and made a part and parcel of this paragraph of this further answer.

Wherefore, this plaintiff, having fully answered the affidavit and motion of the defendants, prays that the temporary restraining order heretofore issued be dissolved.

Hamrick & Hamrick, Attorneys for Plaintiff.

(Verified 8/23/38.)

EXHIBIT "A" TO ANSWER

Investments	Purchase Price
U. S. Savings Bond No. M-193398 B	$750.00
U. S. Savings Bond No. M-193397 B	750.00
U. S. Savings Bond No. M-193396 B	750.00
U. S. Savings Bond No. M-193395 B	750.00
U. S. Savings Bond No. M-49241 B	750.00
U. S. Savings Bond No. M-193400 B	750.00
U. S. Savings Bond No. M-193399 B	750.00
U. S. Savings Bond No. D-59466 B	375.00
U. S. Savings Bond No. D-284491 B	375.00
[fol. 5] U. S. Savings Bond No. M-375593 B	750.00
U. S. Savings Bond No. M-64431 C	750.00
U. S. Savings Bond No. D-80257 C	375.00
U. S. Savings Bond No. D-217183 C	375.00
U. S. Adjusted Serv. Bond No. 26329536	50.00
U. S. Adjusted Serv. Bond No. 26329537	50.00
	$8,350.00

The following balances on notes turned over to Fiduciary from Administrators of former Guardian are now held as property of ward:

Jesse Saine	$69.00	and interest
W. C. McRorie	800.00	and interest
S. M. Long	1678.00	and interest
T. C. Miller	1450.00	(This note considered worthless after exhaustive investigation.)
	$3997.00	

Total Receipts	$1743.51
Total Disbursements	1478.56

Cash Balance: $264.95 is on deposit as follows:

Checking Account:	$264.55	Name of Bank: Union Trust Co.
Savings Account:	.40	Name of Bank: First Industrial Bank.

J. Harvey Carpenter, being duly sworn, says: That the foregoing annual accounting of the estate of John Carrier, incompetent, is true and accurate to the best of his knowledge and belief.

(Signed) J. Harvey Carpenter, Fiduciary.

Subscribed and sworn to before me, this 15th day of February, 1938. F. S. Hall, C. S. C.

I hereby certify that I have made an examination of all investments and bank statements showing cash balance in [fol. 6] this case as required by Section 2202 (10) of the North Carolina Statutes, as amended April 11, 1933, and same are correctly stated in the accounting.

F. S. Hall, Clerk Superior Court.

IN SUPERIOR COURT OF RUTHERFORD COUNTY

ORDER DISSOLVING RESTRAINING ORDER, ETC.

This cause coming on to be heard before J. Will Pless, Jr., Resident Judge of the 18th Judicial District, on the return date, and being heard upon the application of J. Harvey Carpenter, Guardian of John Carrier, for the continuance of the Restraining Order heretofore issued,

and being heard, and it appearing to the Court, and the Court finding as a fact that the plaintiff, Curley Bryant, has obtained judgment in the Superior Court of Rutherford County against the defendant John Carrier in the sum of $1500.00, on account of the alleged alienations of the affections and criminal conversation with the wife of said Bryant, and said cause is now pending on appeal to the Supreme Court of North Carolina; the defendant having filed no supersedeas bond to stay execution thereon, that the plaintiff has caused execution to issue; and

It further appearing to the Court and the Court finding as a fact that the defendant, John Carrier, is a World War veteran and that he is the owner of United States bonds of the principal value of $8397.00 and of promissory notes of the face value of $3997.00, which are investments made for him by his Guardian from the proceeds of moneys paid to him by the United States Government on account of his disability incurred and insurance in the World War.

The defendant invokes Section 454 and Section 454-a, Title 38, U. S. C. A., and contends that under the terms thereof, the property above referred to is exempt from execution, which contention is denied by the plaintiff.

The Court is of the opinion, and so holds, that the prop-
[fol. 7] erty above referred to now constitutes an investment and has lost its character as "payment of benefit", and is, therefore, subject to execution upon the facts herein presented and found.

Upon said holdings, the Court dissolves the injunction, having first required that the plaintiff give a justified bond in the sum of $2,000.00, to be approved by the Clerk of the Superior Court of Rutherford County to indemnify the defendant for any loss he may sustain upon the execution sought, in the event it shall be hereafter determined that said property is exempt from execution.

It it now, therefore, Ordered, Adjudged and Decreed that the Restraining Order heretofore issued be, and the same is hereby dissolved, and the plaintiff is authorized to proceed with execution as he may be advised.

This order, however, is subject to the requirement and condition that before said execution shall be levied that the plaintiff shall file with the Clerk of the Superior Court of Rutherford County justified bond in the sum of $2,000 to be approved by said Clerk, providing that in the event it shall

hereafter be determined that the properties sold under execution were exempt therefrom, that the plaintiff will reimburse immediately the defendant for all monies received by virtue of said execution, together with interest thereon and costs.

This August 24, 1938.

J. Will Pless, Jr., Resident Judge of the 18th Judicial District.

IN SUPERIOR COURT OF RUTHERFORD COUNTY

APPEAL ENTRIES

To the foregoing order the defendant excepts and gives notice of appeal to the Supreme Court. Further notice waived, and appeal bond fixed in the sum of $50.00.

[fol. 8] It is agreed that the affidavit and motion, the answer thereto, including page 3 of the Guardian's Report as attached to said Answer, and this order shall constitute the case on appeal.

J. Will Pless, Jr., Resident Judge of the 18th Judicial District.

IN SUPERIOR COURT OF RUTHERFORD COUNTY

ASSIGNMENTS OF ERROR

The defendants make and group the following assignments of error in the foregoing case, to-wit:

1. The Court committed error in holding that the Government bonds and notes set forth in the inventory filed by J. Harvey Carpenter which is shown and referred to as Investments (on pages 4-5) of the case on appeal are subject to execution.

This constitutes Defendants' Exception #1.

2. That the Court committed error in dissolving the injunction theretofore issued for the reason that said assets and property of the defendant, John Carrier, appellant, is not subject to execution under and by virtue of Sections 454 and 454-a of Title 38 U. S. C. A. said Statute exempting said assets from sale under execution.

This constitutes defendants' Exception #2.

3. That the Court erred in denying the appellants' motion to continue the Restraining Order in said cause and in dissolving the same.

This constitutes defendants' Exception #3.

[fol. 9] Clerk's certificate to foregoing transcript omitted in printing.

(Appeal Bond in the sum of $50.00 filed.)

[fol. 10] IN SUPREME COURT OF NORTH CAROLINA, RUTHERFORD COUNTY, FALL TERM, 1938

No. 172

CURLEY BRYANT

vs.

JOHN CARRIER and J. HARVEY CARPENTER, Guardian of John Carrier

JUDGMENT—September 28, 1938

This cause came on to be argued upon the transcript of the record from the Superior Court of Rutherford County: upon consideration whereof, this Court is of opinion that there is no error in the record and proceedings of said Superior Court.

It is, therefore, considered and adjudged by the Court here, that the opinion of the Court, as delivered by the Honorable Herriot Clarkson, Justice, be certified to the said Superior Court, to the intent that the judgment is affirmed.

And it is considered and adjudged further, that the Defendants and Surety W. O. Gue do pay the costs of the appeal in this Court incurred, to-wit, the sum of Twenty-three 00/100 dollars ($23.00), and execution issue therefor.

A True Copy,

Edward Murray, Clerk of the Supreme Court. (Seal of the Supreme Court of the State of North Carolina.)

[fol. 11] IN SUPREME COURT OF NORTH CAROLINA

No. 172

CURLEY BRYANT

v.

JOHN CARRIER and J. HARVEY CARPENTER, Guardian of John Carrier

OPINION—Filed September 28, 1938

Appeal by defendants from Pless, Jr., J., at Chambers, August 24, 1938, from Rutherford Superior Court. Affirmed.

The order of Pless, Jr., J., indicates the controversy, and is as follows:

"This cause coming on to be heard before J. Will Pless, Jr., Resident Judge of the 18th Judicial District, on the return date, and being heard upon the application of J. Harvey Carpenter, Guardian of John Carrier, for the continuance of the Restraining Order heretofore issued, and being heard, and it appearing to the Court, and the Court finding as a fact that the plaintiff, Curley Bryant, has obtained judgment in the Superior Court of Rutherford County against the defendant John Carrier in the sum of $1500.00 (This judgment has been affirmed—see opinion at this term), on account of the alleged alienations of the affections and criminal conversation with the wife of said Bryant, and said cause is now pending on appeal to the Supreme Court of North Carolina; the defendant having filed no supersedeas bond to stay execution thereon, that the plaintiff has caused execution to issue; and

It further appearing to the Court and the Court finding as a fact that the defendant, John Carrier, is a World War veteran and that he is the owner of United States bonds of the principal value of $8397.00 and of promissory notes of the face value of $3997.00, which are investments made for him by his Guardian from the proceeds of moneys paid to him by the United States Government on account of his disability incurred and insurance in the World War.

The defendant invokes Section 454 and Section 454-a, [fol. 12] Title 38, U. S. C. A., and contends that under the terms thereof, the property above referred to is exempt from execution, which contention is denied by the plaintiff.

The Court is of the opinion and so holds, that the property above referred to now constitutes an investment and has lost its character as 'payment of benefit', and is therefore, subject to execution upon the facts herein presented and found.

Upon said holdings, the Court dissolves the injunction, having first required that the plaintiff give a justified bond in the sum of $2,000.00, to be approved by the Clerk of the Superior Court of Rutherford County to indemnify the defendant fro- any loss he may sustain upon the execution sought, in the event it shall be hereafter determined that said property is exempt from execution.

It is now, therefore, Ordered, Adjudged and Decreed that the Restraining Order heretofore issued be, and the same is hereby dissolved, and the plaintiff is authorized to proceed with execution as he may be advised.

This order, however, is subject to the requirement and condition that before said execution shall be levied that the plaintiff shall file with the Clerk of the Superior Court of Rutherford County justified bond in the sum of $2,000 to be approved by said Clerk, providing that in the event it shall hereafter be determined that the properties sold under execution were exempt therefrom, that the plaintiff will reimburse immediately the defendant for all monies received by virtue of said execution, together with interest thereon and costs. This August 24, 1938. J. Will Pless, Jr., Resident Judge of the 18th Judicial District."

The defendants excepted and assigned error as follows: "(1) The Court committed error in holding that the Government bonds and notes set forth in the inventory filed by J. Harvey Carpenter which is shown and referred to as Investments are subject to execution. (2) That the Court committed error in dissolving the injunction theretofore issued for the reason that said assets and property of the defendant, John Carrier, appellant, is not subject to execution under and by virtue of Sections 454 and 454-a of Title 38, [fol. 13] U. S. C. A., said Statute exempting said assets from sale under execution. (3) That the Court erred in denying the appellants' motion to continue the Restraining Order in said cause and in dissolving the same."

Defendants appealed to the Supreme Court.

Hamrick & Hamrick, for plaintiff.
Edwards & Edwards, for defendants.

CLARKSON, J.:

The question involved: Are investments in negotiable notes and in United States Bonds purchased with "payments of benefits" under the laws relating to World War Veterans, exempt from execution on a judgment against the veteran? We think not.

The defendant, John Carrier, is a World War Veteran, and owns United States Bonds in the principal amount of $8,350.00, and promissory notes of the face value of $3,997.00. These are investments made for the defendant by his guardian from the proceeds of money paid to him by the United States Government on account of his disability incurred and insurance in the World War. These bonds and notes are shown as investments in the report of the guardian of the defendant, filed with the Clerk of the Superior Court of Rutherford County on February 15, 1938. The investments are set forth in the pleadings.

What is said in United States v. Hall, 98 U. S., at p. 346, is well worth repeating:

"Power to grant pensions is not controverted, nor can it well be, as it was exercised by the states and by the Continental Congress during the War of the Revolution; and the exercise of the power is coeval with the organization of the government under the present Constitution, and has been continued without interruption or question to the present time. * * * (p. 350). Such laws had their origin in the patriotic service, great hardship, severe suffering, and physical disabilities contracted while in the public service by the officers, soldiers, and seamen who spent their property, lost their health, and gave their time for their country [fol. 14] in the great struggle for liberty and independence, without adequate or substantial compensation. * * * (p. 351). Bounties may be offered to promote enlistments, and pensions to the wounded and disabled may be promised as like inducements. Past services may also be compensated, and pensions may also be granted to those who were wounded, disabled, or otherwise rendered invalids while in the public service, even in cases where no prior promise was made or antecedent inducement held out." Hinton v. State Treasurer, 193 N. C., 496 (508)."

The power of Congress to exempt from taxation and creditors is not questioned. The Court below held that "the

property above referred to now constitutes an investment and has lost its character as 'payment of benefit', and is, therefore, subject to execution upon the facts herein presented and found."

What is the Federal Law on the subject? The former Act of 1924, Federal Statute 38, U. S. C. A., Sec. 454, reads as follows:

"Assignability and exempt status of compensation, insurance, and maintenance and support allowances. The compensation, insurance, and maintenance and support allowance payable under Parts II, III and IV, respectively, shall not be assignable; shall not be subject to the claim of creditors of any person to whom an award is made under Parts II, III or IV; and shall be exempt from all taxation. Such compensation, insurance, and maintenance and support allowance shall be subject to any claims which the United States may have, under Parts II, III, IV, and V, against the person on whose account the compensation, insurance, or maintenance and support allowance is payable."

The 1935 Act, Sec. 454-a, Title 38 U. S. C. A., has the following language:

"Assignability and exempt status of payments of benefits. Payments of benefits due or to become due shall not be assignable, and such payments made to, or on account of, a beneficiary under any of the laws relating to veterans shall be exempt from taxation, shall be exempt from the claims of creditors, and shall not be liable to attachment, [fol. 15] levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. Such provisions shall not attach to claims of the United States arising under such laws nor shall the exemption herein contained as to taxation extend to any property purchased in part or wholly out of such payments."

In the case of Trotter v. Tennessee, 290 U. S. 354, 78 L. ed. 358 (1933), the facts were: A veteran in Tennessee purchased land with money received from the United States Government as compensation for his services in the World War. The State of Tennessee sought to tax this property. The Supreme Court of the United States held that when the

veteran invested his money in land, the money lost its identity as money, and lost its immunity under the statute. At page 360, L. Ed., Mr. Justice Cardozo, writing for the Court says:

"The moneys payable to this soldier were unquestionably exempt till they came into his hands or the hands of his guardian. McIntosh v. Aubrey, 185 U. S. 122, 46 L. Ed. 834, 22 S. Ct. 561. We leave the question open whether the exemption remained in force while they continued in those hands or on deposit in a bank. CF. McIntosh v. Aubrey, supra; State ex rel. Smith v. Shawnee County, 132 Kan. 233, 294 Pac. 915; Wulson v. Sawyer, 177 Ark. 492, 6 S. W. (2d) 825, and Surace v. Danna, 248 N. Y. 18, 24, 25, 161 N. E. 315. Be that as it may, we think it very clear that there was an end to the exemption when they lost the quality of moneys and were converted into land and buildings. The statute speaks of 'compensation, insurance, and maintenance and support allowance payable' to the veteran, and declares that these shall be exempt. We see no token of a purpose to extend a like immunity to permanent investments or the fruits of business enterprises. Veterans who choose to trade in land or in merchandise, in bonds, or in shares of stock, must pay their tribute to the state. If immunity is to be theirs, the statute conceding it must speak in clearer terms than the one before us here. The judgment of the Supreme Court of Tennessee disallowing the exemption has support in other courts. State v. Wright, 224 Ala. 357, 140 So. 584; Martin v. Guilford County, 201 N. C. 63, 158 S. E. 847, 76 A. L. R. [fol. 16] 978. There are decisions to the contrary but we are unable to approve them. Rucker v. Merck, 172 Ga. 793, 159 S. E. 501; Atlanta v. Stokes, 175 Ga. 201, 165 S. E. 270; Payne v. Jordan, 36 Ga. App. 787, 138 S. E. 262. Our ruling in Spicer v. Smith, 288 U. S. 430, 77 L. Ed. 875, 53 S. Ct. 415, 84 A. L. R. 1525, leaves no room for the contention that the exemption is enlarged by reason of payment to the guardian instead of payment to the ward. The judgment is affirmed."

It will be noted in the Trotter case, supra, a similar decision of this Court was upheld. Martin v. Guilford Co., 201 N. C. 63, 76 A. L. R. 978.

In State Hospital v. Bank, 207 N. C. 697 (708) it was held:

"Under the statute as construed by the Supreme Court of the United States and by this Court, the contention of

the defendant cannot be sustained. The estate of Earl N. Betts, consisting of securities now held by his guardian, is subject to the claim of the plaintiff in this action, notwithstanding the fact that such securities were purchased by his guardians with moneys paid to them by the United States Government as compensation awarded under the Act of Congress to the said Earl N. Betts as a veteran of the Army of the United States."

The Trotter, Martin, and Hospital cases, supra, undoubtedly sustain the liability of the veteran.

In Lawrence v. Shaw, 300 U. S. 245, 81 L. ed. 623 (1936), decided under the 1935 Act, upon an appeal from the Supreme Court of North Carolina, Mr. Chief Justice Hughes, writing for the Court, says; at page 626, L. Ed.:

"The World War Veterans' Act, 1924, provided that the compensation and insurance allowances should be 'exempt from all taxation'. The Act of 1935 is more specific, providing that the payments shall be exempt from taxation and shall not be liable to process 'either before or after receipt by the beneficiary'. There was added the qualification that the exemption should not extend 'to any property purchased in part or wholly out of such payments.' This more detailed provision was substituted for that of the earlier Act and [fol. 17] was expressly made applicable to payments theretofore made. We think it clear that the provision of the later Act was intended to clarify the former rather than to change its import and it was with that purpose that it was made retroactive."

In the Lawrence case, supra, the Court says, at page 626, L. ed. (Vol. 81):

"In Trotter v. Tennessee, 290 U. S. 354, 78 L. ed. 358, 54 Supreme Court, 138, supra, we considered the provisions of paragraph 22 of the World War veterans' Act, 1924, in relation to investments by the guardian of an incompetent veteran of the moneys received from the Government for compensation and insurance. We held that land purchased by the guardian with such moneys was not exempt. We said: 'The statute speaks of 'compensation, insurance, and maintenance and support allowance payable' to the veteran, and declares that these shall be exempt. We see no token of a purpose to extend a like immunity to permanent investments

of the fruits of business enterprises. Veterans who choose to trade in land or in merchandise, in bonds or in shares of stock, must pay their tribute to the State'."

The Court continues, on page 627, L. Ed.:

"The provision of the Act of 1935 that the exemption should not apply to property purchased out of moneys received from the Government shows the intent to deny exemption to investments, as was ruled in the Trotter Case. It is of course true that deposits in bank may be made under special agreement by which the deposits assume the character of investments and would lose immunity accordingly. No such agreement is shown here. Nor are the bank balances shown to be the proceeds of investments. They are stipulated to be 'uninvested balances' of the government payments. * * * We hold that the immunity from taxation does attach to bank credits of the veteran or his guardian which do not represent or flow from his investments but result from the deposit of the warrants or checks received from the Government when such deposits are made in the ordinary manner so that the proceeds of the collection are subject to draft upon demand for the veteran's use. In [fol. 18] order to carry out the intent of the statute, the avails of the government warrants or checks must be deemed exempt until they are expended or invested. The answer by the state court is broad enough to cover bank deposits of that sort and we consider the ruling in that application to be contrary to the federal statute."

We think that it is clear from the holding of the Supreme Court of the United States, in Lawrence v. Shaw, supra, that the Court intends to lay down the rule that investments of a World War veteran are subject to taxation, and to the claims of the veteran's creditors. This being so, the investments of the defendant in this case are clearly subject to the execution issued upon plaintiff's judgment. A case directly in point is McCurry v. Peek, 54 Ga. App. 341, 187 S. E. 854 (1936).

To stretch the United States Statute of 1935 to cover the facts in this case, as found by the Court below, would lead us into chaos. When the investments are bona-fide made and a novation takes place, taxes attach and creditors have a right to collect their just debts. We hardly think that the noble, heroic veterans would have it otherwise.

For the reasons given, the judgment of the Court below is Affirmed.

A true copy.

Edward Murray, Clerk of the Supreme Court of North Carolina. (Seal of the Supreme Court of the State of North Carolina.)

[fol. 19] [File endorsement omitted.]

[fol. 20] IN SUPREME COURT OF NORTH CAROLINA

[Title omitted]

DOCKET ENTRIES

Appeal docketed 5 September, 1938.
Case argued 21 September, 1938.
Opinion filed 28 September, 1938.
Final Judgment entered 28 September, 1938.

IN SUPREME COURT OF NORTH CAROLINA

CLERK'S CERTIFICATE

I, Edward Murray, Clerk of the Supreme Court of North Carolina, do hereby certify the foregoing to be a full, true and perfect copy of the record and proceedings in the above entitled case, as the same now appear from the originals on file in my office.

I further certify that no petition to rehear has been filed, and that the time for filing such petition under the rules of this Court has expired.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at office in Raleigh, North Carolina, this 7 December, 1938.

Edward Murray, Clerk of the Supreme Court of the State of North Carolina. (Seal of the Supreme Court of the State of North Carolina.)

[fol. 21] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed January 30, 1939

The petition herein for a writ of certiorari to the Supreme Court of the State of North Carolina is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(10051)